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*Counsel to the Circuit City Stores, Inc.  
 Liquidating Trust*

Lynn L. Tavenner, Esq. (VA Bar No. 30083)  
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 TAVENNER & BERAN, PLC  
 20 North Eighth Street, 2<sup>nd</sup> Floor  
 Richmond, Virginia 23219  
 Telephone: (804) 783-8300  
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*Counsel to the Circuit City Stores, Inc.  
 Liquidating Trust*

IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION

-----	x	
In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC., <u>et al.</u> ,	:	Case No. 08-35653 (KRH)
	:	
Debtors.	:	
-----	:	Jointly Administered
	x	

**LIQUIDATING TRUST’S OBJECTION TO ADMINISTRATIVE EXPENSE  
REQUEST OF DAPHNE A. WARD**

The Circuit City Stores, Inc. Liquidating Trust (the “Liquidating Trust”), through Alfred H. Siegel, the duly appointed trustee of the Trust (the “Trustee”), pursuant to the Second Amended Joint Plan of Liquidating of Circuit City Stores, Inc. and its Affiliated Debtors and Debtors in Possession and its Official Committee of Creditors Holding General Unsecured Claims (the “Plan”) n the above-captioned cases, hereby files this Objection to the Administrative Expense Request of Daphne A. Ward (the “Ward Claim”), and hereby moves this court (the “Court”), pursuant to sections 105, 502 and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy

Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Bankruptcy Rule 3007-1, for an order disallowing the Ward Claim in its entirety. In support of the Objection, the Liquidating Trust states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Objection under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Objection in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are Bankruptcy Code sections 105, 502 and 503, Bankruptcy Rule 3007 and Local Bankruptcy Rule 3007-1.

### **BACKGROUND**

2. On November 10, 2008 (the "Petition Date"), the debtors in the above-captioned cases (the “Debtors”)<sup>1</sup> filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

3. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the “Creditors’ Committee”).

4. On November 12, 2008, the Court appointed Kurtzman Carson Consultants LLC (“KCC”) as claims, noticing, and balloting agent for the Debtors in these chapter 11 cases pursuant to 28 U.S.C. § 156(c).

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Proper ties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc.(6796), Sky Venture Corp. (0311), PRAHS, Inc.(n/a), XStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512).

5. On December 10, 2008, the Court entered that certain Order Pursuant to Bankruptcy Code Sections 105 and 502 and Bankruptcy Rules 2002, 3003(c)(3), and 9007 (I) Setting General Bar Date and Procedures for Filing Proofs of Claim; and (II) Approving Form and Manner of Notice Thereof (Docket No. 890) (the “Claims Bar Date Order”).

6. Pursuant to the Claims Bar Date Order, the deadline for filing all “claims” (as defined in 11 U.S.C. § 105(5)) arising before November 10, 2008 against the Debtors by any non-governmental entity was 5:00 p.m. (Pacific) on January 30, 2009 (the “General Bar Date”). The deadline for governmental units to file claims that arose before November 10, 2009 was 5:00 p.m. (Pacific) on May 11, 2009 (the “Governmental Bar Date”). Pursuant to the Claims Bar Date Order, this Court approved the form and manner of the claims bar date notice, which was attached as Exhibit A to the Claims Bar Date Order (the “Claims Bar Date Notice”).

7. On December 17 and 19, 2008, KCC served a copy of the Claims Bar Date Notice on all parties who filed notices of appearance pursuant to Bankruptcy Rule 2002, all of the Debtors’ scheduled creditors in these cases, the Debtors’ equity holders, and certain other parties (Docket No. 1314). In addition, the Debtors published the Claims Bar Date Notice in The Wall Street Journal (Docket No. 1395) and The Richmond Times-Dispatch (Docket No. 1394).

8. On November 12, 2008, this Court entered that certain Order Establishing Bar Date for Filing Requests for Payment of Administrative Expense Claims Under Bankruptcy Code Sections 105 and 503(b)(9) and Approving Form, Manner and Sufficiency of Notice of the Bar Date Pursuant to Bankruptcy Rule 9007 (Docket No. 107)(the “503(b)(9) Bar Date Order”).

9. Pursuant to the 503(b)(9) Bar Date Order, this Court approved the form and manner of the 503(b)(9) bar date notice, which was attached as Exhibit A to the 503(b)(9) Bar Date Order (the “503(b)(9) Bar Date Notice”). Pursuant to the 503(b)(9) Bar Date Order and 503(b)(9) Bar Date Notice, the bar date for filing proofs of claim asserting administrative priority claims pursuant to section 503(b)(9) of the Bankruptcy Code was on December 19, 2008 (the “503(b)(9) Bar Date”).

10. On November 19, 2008, KCC served a copy of the 503(b)(9) Bar Date Notice on the 2002 Service List, all of the Debtors’ scheduled creditors in these cases, the Debtors’ equity holders, and certain other parties (Docket No. 358). In addition, the Debtors published the 503(b)(9) Bar Date Notice in The New York Times (Docket No. 549), The Wall Street Journal (Docket No. 548), and The Richmond Times-Dispatch (Docket No. 547).

11. On January 16, 2009, the Court authorized the Debtors, among other things, to conduct going out of business sales at the Debtors’ remaining 567 stores pursuant to an agency agreement (the “Agency Agreement”) between the Debtors and a joint venture, as agent (the “Agent”). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors remaining stores. As of March 8, 2009, the going out of business sales at the Debtors’ remaining stores had been completed.

12. On April 1, 2009, this Court entered an Order Establishing Omnibus Objection Procedures and Approving the Form and Manner of Notice of Omnibus Objections (Docket No. 2881) (the “Omnibus Objection Procedures Order”).

13. On May 15, 2009, the Court entered that certain Order Pursuant to Bankruptcy Code Sections 105 and 503 and Bankruptcy Rules 2002 and 9007 (i) Setting

Administrative Bar Date and Procedures For Filing and Objecting To Administrative Expense Request and (ii) Approving Form and Manner of Notice Thereof (Docket No. 3354) (the “Administrative Claims Bar Date Order”).

14. Pursuant to the Administrative Claims Bar Date Order, the deadline for filing all Administrative Expense Requests (as defined in the Administrative Claims Bar Date Order) was 5:00 p.m. (Pacific) on June 30, 2009. Pursuant to the Administrative Claims Bar Date Order, this Court approved the form and manner of the claims bar date notice, which was attached as Exhibit A to the Administrative Claims Bar Date Order (the “Claims Bar Date Notice”).

15. On or before May 22, 2009, KCC served a copy of the Administrative Claims Bar Date Notice on all parties who filed notices of appearance pursuant to Bankruptcy Rule 2002, all of the Debtors’ scheduled creditors in these cases, the Debtors’ equity holders, and certain other parties (Docket Nos. 3397 and 4609). In addition, the Debtors published the Administrative Claims Bar Date Notice in The Financial Times (Docket No. 3970), The Richmond Times-Dispatch (Docket No. 3969) and The Wall Street Journal (Docket No. 3968).

16. On August 9, 2010, the Debtors and the Creditors’ Committee filed the Plan, which provides for the liquidation of the Debtors’ assets and distribution of the proceeds thereof under chapter 11 of the Bankruptcy Code.

17. On September 10, 2010, the United States Bankruptcy Court, Eastern District of Virginia, signed an Order confirming the Plan.

18. The Plan became effective on November 1, 2010 (the “Effective Date”), and pursuant to the Plan and Liquidating Trust Agreement approved therewith, the Trust

assumed the right and responsibility to liquidate the Debtors' remaining assets and distribute the proceeds to creditors, including the prosecution of Causes of Action and objections to claims.

### **OBJECTION TO THE WARD CLAIM**

19. The Ward Claim asserts the right to an administrative expense under Bankruptcy Code section 503(b)(1)(A) relating to medical expenses incurred by Ward between December, 2008 and February, 2009 for "medically necessary weight loss surgery," in the total amount of \$34,213.75. In sum, Ward has failed to satisfy her burden to establish that the Debtors were responsible for payment of the requested expenses.

20. The Ward Claim separately identifies and provides support for a variety of medical expenses, but does not provide any evidence to suggest that the Debtors are responsible for payment of expenses not allowed through the Debtors' health plan, Empire Blue Cross Blue Shield ("Empire"). In fact, Empire provided Ward with a detailed explanation of the benefits available under the health plan, and that the amount of the benefits paid was correct. Ward requested two reviews of her claims by Empire in July and August, 2009; her appeal was denied, again with an explanation from Empire as to the basis of its decision. (True and correct copies of Empire's July 22 and August 14, 2009 letters to Ward are attached hereto as Exhibit B).

21. Thus, Ward was not entitled to payment of the requested expenses through the health benefit plan provided by the Debtors. As a result, in order to demonstrate that she is entitled to an administrative expense claim under Section 503(b)(1), Ward must demonstrate that the payment of medical expenses above and beyond her employee health benefits was an "actual and necessary cost of preserving the estate." Ward has not

attempted to and clearly cannot present any evidence of this notion. Indeed, approval of these expenses would be destructive of the goal of promoting the Debtor's business operations, of "preserving the estate."

22. The Liquidating Trust respectfully requests that the Ward Claim be disallowed in its entirety.

### **RESERVATION OF RIGHTS**

23. The Liquidating Trust reserves the right to modify, supplement and/or amend this Objection upon the receipt of additional information..

### **WAIVER OF MEMORANDUM OF LAW**

24. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion, the Liquidating Trust requests that the requirement that all motions be accompanied by a written memorandum of law be waived.

### **NO PRIOR RELIEF**

25. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Liquidating Trust respectfully requests that the Court enter an Order sustaining this Objection and disallowing the Ward Claim (a form of which is attached hereto as Exhibit A), and granting such other and further relief as the Court deems appropriate.

Dated: Richmond, Virginia  
February 17, 2011

TAVENNER & BERAN, PLC

/s/ Lynn L. Tavenner  
Lynn L. Tavenner (VA Bar No. 30083)  
Paula S. Beran (VA Bar No. 34679)  
20 North Eighth Street, 2<sup>nd</sup> Floor  
Richmond, Virginia 23219  
(804) 783-8300

- and -

PACHULSKI STANG ZIEHL & JONES LLP  
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Los Angeles, California 90067-4100  
(310) 277-6910

*Counsel to the Circuit City Stores, Inc.  
Liquidating Trust*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of February, 2011 a true copy of the foregoing was served through the Court's ECF system to all registrants participating in this case and via first-class mail, postage-prepaid and/or electronic delivery to:

Daphne A. Ward  
12646 Willow View Place  
Waldorf, Maryland 20602

Robert B. VanArsdale, Esquire -Office of the United States Trustee  
701 East Broad Street, Suite 4304  
Richmond, Virginia 23219

/s/ Lynn L. Tavenner





**EXHIBIT A**

Jeffrey N. Pomerantz, Esq.  
Andrew W. Caine, Esq.  
(admitted *pro hac vice*)  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Boulevard  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
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In re:	:	Chapter 11
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CIRCUIT CITY STORES, INC., <u>et al.</u> ,	:	Case No. 08-35653 (KRH)
	:	
Debtors.	:	
-----	:	Jointly Administered
	X	

**ORDER SUSTAINING LIQUIDATING TRUST'S  
OBJECTION TO THE ADMINISTRATIVE EXPENSE CLAIM  
OF DAPHNE A. WARD**

THIS MATTER having come before the Court<sup>2</sup> on the Liquidating Trust's Objection (the "Objection") to the Administrative Expense Claim of Daphne A. Ward (the "Ward Claim"), which requested that the Ward Claim be disallowed for those reasons set forth in the Objection; and it appearing that due and proper notice and service of the Objection as set forth therein was good and sufficient; and it appearing that the relief

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Objection.

requested on the Objection is in the best interest of the Liquidating Trust, the Debtors' estates and creditors and other parties-in-interest; and after due deliberation thereon good and sufficient cause exists for the granting of the relief as set forth herein,

IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT:

1. The Objection is SUSTAINED.
2. The Ward Claim is forever disallowed in its entirety for all purposes in these bankruptcy cases.
3. The Liquidating Trust shall serve a copy of this Order on the claimant on or before five (5) business days from the entry of this Order.
4. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Order.

Dated: Richmond, Virginia  
\_\_\_\_\_, 2011

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HONORABLE KEVIN R. HUENNEKENS  
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

TAVENNER & BERAN, PLC

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Lynn L. Tavenner (VA Bar No. 30083)  
Paula S. Beran (VA Bar No. 34679)  
20 North Eighth Street, 2<sup>nd</sup> Floor  
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(310) 277-6910

*Counsel to the Circuit City Stores, Inc.  
Liquidating Trust*

**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Lynn L. Tavenner

Lynn L. Tavenner

ONE ORIGINAL PLUS:

COPY 1 JOSEPH D AFRAM MD

July 22, 2009

DAPHNE WARD  
12646 WILLOW VIEW PL  
WALDORF MD 20602

Member ID Number:	83680267
Patient's Name:	Daphne Ward
Claim Number:	94798680140
Inquiry Number:	07020901050901
Provider of Service:	Joseph D Afram MD
Date(s) of Service:	02/03/2009

Dear Ms. Ward:

This letter is in response to your inquiry of July 2, 2009 regarding the above-referenced claim. We hope this information is helpful.

Based on the provisions of your Empire BlueCross BlueShield benefit plan, this claim was reviewed and has been determined to have processed correctly. The allowances given on this claim are correct. When multiple surgeries are billed, payment is reimbursed at 100% of the maximum allowance for the procedure with the highest fee schedule allowance and 50% of the fee schedule allowance for the second and all subsequent procedures. This claim has applied \$300.00 to your in-network deductible and \$339.42 to your in-network coinsurance for 2009. This claim was billed by an out-of-network provider but was paid at the in-network level of benefits because the surgeon is a PPO participating provider. Any non-participating professional provider that is paid at the in-network benefit level will be reimbursed using the usual and customary pricing. The member is responsible for any deductible, coinsurance and amount above the usual and customary allowed amount.

If you disagree with our decision, you or your authorized representative may request an appeal at the above address. You must submit your appeal within 180 calendar days of the date of this letter. Your appeal must include your identification number, date of service in question and any additional information that supports your appeal. We will make a decision within 30 calendar days of receipt of your appeal.

We regret that we cannot extend additional benefits for this service.

You may request, free of charge, reasonable access to, and copies of all documents, records and other information including the clinical guidelines relevant to your benefit request.

If you are enrolled through a group that is subject to the Employee Retirement Income Security Act ("ERISA") and you disagree with the decision on appeal, you may file a lawsuit under ERISA.

Should you have any questions, please contact the telephone number above. We are available Monday through Friday.

Sincerely,

A handwritten signature in cursive script that reads "Maria Zananski".

Maria Zananski  
Claims Representative III  
Circuit City Service Center

cc: Joseph D Afram MD  
NCCX  
SI

JOSEPH D AFRAM MD  
2440 M ST NW STE 411  
WASHINGTON DC 20037



July 22, 2009

DAPHNE WARD  
12646 WILLOW VIEW PL  
WALDORF MD 20602

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Maria Zananski  
Claims Representative III  
Circuit City Service Center

cc: Joseph D Afram MD  
NCCX  
SI

ONE ORIGINAL PLUS:

COPY 1 JOSEPH D AFRAM MD

August 14, 2009

DAPHNE WARD  
12646 WILLOW VIEW PL  
WALDORF MD 20602

Member ID# : 83680267  
Member Name: Burnis Ward  
Patient Name: Daphne Ward  
Provider of Service: Afram Joseph D MD  
Claim Number: 94798680140  
Date(s) of Service: 02/03/2009  
Inquiry#: 08040903327901

Dear Ms. Ward:

Your recent appeal concerning the above claim has been denied for the following reason:

Since Empire BlueCross BlueShield was your secondary insurance for the above date of service, your Circuit City 2008 PPO plan provides maintenance of benefits provision. Under this provision, your claims are processed in the following manner:

Payment is calculated according to the terms of your Circuit City PPO plan paying up to your primary insurance liability amount less the amount paid by your primary insurance.

Since your primary insurance made no payment on this claim, the services were processed as if Empire was the primary carrier. Since this provider is not a participating provider within your network, payment is calculated based on the reasonable and customary allowance. Assistant surgeon benefits are reimbursed at 20% of the surgical allowance.

This claim processed at the in-network benefit level based on the participation status of the surgeon. The \$9,702.90 that was disallowed on this claim is the difference between the reasonable and customary allowance for assistant surgery and the provider's charge of \$11,700.00 for this claim.

We apologize for any confusion regarding your Explanation of Benefits. Our statement was intended to explain that as a secondary insurance carrier we will supplement what your primary insurance has not covered in accordance with the terms of your medical plan. Since your primary insurance denied this claim, services have processed as if Empire were the primary insurance.

We regret that we cannot extend additional benefits for this service.

You may request, free of charge, reasonable access to, and copies of all documents, records and other information including the clinical guidelines relevant to your benefit request.

If you are enrolled through a group that is subject to the Employee Retirement Income Security Act ("ERISA") and you disagree with the decision on appeal, you may file a lawsuit under ERISA.

You have exhausted all internal appeals to Empire BlueCross BlueShield. Therefore, this determination is final and binding.

Sincerely,

A handwritten signature in cursive script that reads "Beth D'Andrea".

Beth D'Andrea  
Claims Adjuster  
Circuit City Service Center

CC: Joseph D Afram MD

NCCX  
G1

JOSEPH D AFRAM MD  
SUITE 411  
2440 M STREET NW  
WASHINGTON DC 20037

August 14, 2009

DAPHNE WARD  
12646 WILLOW VIEW PL  
WALDORF MD 20602

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You have exhausted all internal appeals to Empire BlueCross BlueShield. Therefore, this determination is final and binding.

Sincerely,

A handwritten signature in cursive script that reads "Beth D'Andrea".

Beth D'Andrea  
Claims Adjuster  
Circuit City Service Center

CC: Joseph D Afram MD

NCCX  
G1